ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2008

Ms. Traci S. Briggs
Deputy City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2008-02380

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 302688.

The City of Killeen (the "city") received a request for a copy of the winning proposal related to an RFP for collections. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also believe that the submitted information implicates the proprietary interests of an interested third party, Municipal Services Bureau ("MSB"), and you have notified the company of the request for information and its opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from MSB explaining why the submitted information should not be released.

On behalf of MSB, however, the city asserts that the submitted information may be excepted under section 552.110(b) of the Government Code, which protects "[c]ommercial or

financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm).

The city states that MSB submitted the winning bid, and that the requestor also submitted a bid. The city explains that "[a]s part of the bid process, bidders were required to submit detailed information about their companies, staff, customer base and collection processes, all of which are unique to each bidder." The city asserts that if the requested information is released, the requestor "may be able to obtain competitive information from the MSB bid." Having reviewed the city's representations, we find that it has not supplied a specific factual or evidentiary showing that substantial competitive injury to MSB would likely result from releasing the company's information. Further, as stated previously, MSB has not submitted to this office any reasons explaining why the information responsive to the request should not be released. We therefore conclude that the city may not withhold any of the submitted information under section 552.110. *See* Open Records Decision No. 509 at 5 (1988) (stating because costs, bid specifications, and circumstances will change for future contracts, argument that competitor could obtain unfair advantage on future contracts is entirely too speculative to serve as basis for withholding information). Thus, the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

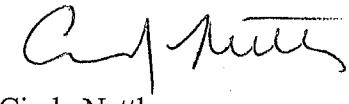
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath* , 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 302688

Enc. Submitted documents

c: Ms. Kimberly Summerlot
NRA Group LLC
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2491 Paxton Street
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(w/o enclosures)

Mr. Bruce Cummings
Municipal Services Bureau
6505 Airport Boulevard, Suite 100
Austin, Texas 78752
(w/o enclosures)